

2013 IL App (2d) 120313-U  
No. 2-12-0313  
Order filed December 16, 2013

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
WILLIAM PEPPLER,,	)	of Lake County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 07-D-2251
	)	
CORINNE PEPPLER,	)	Honorable
	)	Veronica O'Malley,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court properly refused to find husband in contempt of court for failing to pay certain expenses related to the marital home when the home was not listed for sale as represented in the marriage settlement agreement. Trial court abused its discretion in granting husband's petition to modify child support when it relied upon husband's testimony alone regarding a dramatic decrease in salary, and it erred in failing to set a specific dollar amount in its order modifying such support. Judgment affirmed in part and reversed in part.
- ¶ 2 The respondent, Corrine Peppler (Corrine), appeals from an order of the trial court: (1) denying count II of her petition for rule to show cause against the petitioner, William Peppler

(William); and (2) granting William's petition to modify child support. For the following reasons, we affirm in part and reverse in part.

¶ 3

### I. BACKGROUND

¶ 4 The record reflects that the parties were married on September 12, 1992. During their marriage they had two children: S.P., born on January 8, 1999, and C.P., born on February 27, 2001. A judgment of dissolution of marriage (judgment) was entered on June 6, 2008. The judgment provided that each of the parties was bound by the terms of the marriage settlement agreement, dated May 26, 2008, and that agreement was incorporated into and made a part of the judgment.

¶ 5 With respect to child support, it was provided that William would pay Corrine "the sum of \$1,384.52 per month, plus 28% of the net from all bonuses and commissions. Said amounts are equal to 28% of Husband's net income from all sources as defined by Statute." With respect to the marital residence, the judgment provided as follows:

"A. The parties acknowledge and agree that they jointly own the real estate located at 365 C Sundown Court, Wauconda, Illinois. Wife is awarded exclusive possession of said real estate. Wife shall be solely responsible for the following expenses related to the property; utilities, homeowner association dues and maintenance of said property. Husband shall contribute to Wife \$500.00 per month towards the mortgage and contribute ½ of the real estate taxes and ½ of any special assessments when due until the property is sold.

B. The above-referenced real estate is currently listed for sale. When the above real estate is sold, all expenses attributable to said real estate shall be paid from the proceeds, including, but not limited to, all customary closing costs, including real

estate commission, tax prorations and the remaining balance of any outstanding mortgage. The balance of the proceeds shall be split as follows; Wife to receive 60% of the first \$100,000 and the balance to be divided equally between Husband and Wife.”

¶ 6 More than two years later, on August 2, 2010, Corrine filed a petition for a rule to show cause against William. In count II of the petition<sup>1</sup> she alleged that William had failed to abide by the provision of the judgment that he pay \$500.00 per month toward the mortgage and contribute half of the real estate taxes and half of any special assessment until the property is sold. Therefore, Corrine argued, William owed her \$15,546.64. She broke down that amount as follows: (1) \$3,500 for the 2008 mortgage payments; (2) \$3,700 for the 2009 mortgage payments; (3) \$2,612.81 for real estate taxes paid in 2009; (4) \$3,000 for 2010 mortgage payments (as of June 2010); (5) \$2,414.50 for 2010 real estate taxes; and (5) \$319.33 in attorney’s fees. Corrine requested that the court require William to pay her \$15,546.64 in order to purge the rule to show cause, or, in the alternative, incarcerate William in the Lake County jail until such time as the monies were paid.

¶ 7 On August 26, 2010, William filed a petition to modify maintenance, child support, child-related expenses and medical expenses, pursuant to section 510 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/510 (West 2010). In the petition, William alleged that while his base income at the time of the entry of the judgment was \$95,000 with an anticipated annual gross income of \$150,000 after his bonus, he was terminated by that employment, lost a subsequent job, and after a period of unemployment, resumed working on August 16, 2010, with a gross annual salary of \$27,900. He further alleged that Corrine agreed to accept 28% of his income

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<sup>1</sup> The other counts in the petition are not the subject of this appeal.

in lieu of him paying his court-ordered financial obligations, and that his obligations to pay maintenance, child support, child-related expenses and medical insurance should be reduced commensurate with his net income.

¶ 8 On November 16, 2010, the trial court initially found that paragraph B of the marriage settlement agreement, which dealt with the sale of the marital residence and dividing the sale proceeds, was not a condition precedent to William's obligation in paragraph A of the marriage settlement agreement to pay expenses relating to the residence pending the sale. Therefore, the trial court held that William was required to reimburse Corrine for the expenses related to the marital residence.

¶ 9 The trial court held hearings on Corrine's petition for rule to show cause and William's petition to modify child custody on August 31, 2011, and December 15, 2011. However, no court reporter was present and there is no transcript of those proceedings.

¶ 10 On February 16, 2012, the trial court entered a written order reversing its previous ruling that required William to reimburse Corrine for the expenses related to the marital residence. The court found that the listing of the property was a condition precedent to William's obligation to pay, and because the parties did not have the marital residence listed with a realtor at the time the judgment was entered, William did not owe Corrine for the costs of the real estate pursuant to the terms of the marriage settlement agreement. The court also ruled on several other issues. With regard to child support, it held that William's support obligation was modified to provide that William pay 28% of all net money received from all sources to Corrine for child support. However, no dollar amount was set as support, and the court noted that the "net money received from all sources" did not include any contributions made toward any retirement account. As part of its order, the court ruled that, pursuant

to Supreme Court Rule 304(a) (eff. Feb. 26, 2010), there was no just reason to delay enforcement or appeal of that order.

¶ 11 On September 4, 2012, the trial court granted Corrine's petition to certify the report of proceedings and the supplemental record on appeal. The supplemental record contains a bystander's report with 78 stipulations by the parties as to what occurred at the hearings held on August 31 and December 15, 2011.

¶ 12 Among those stipulations were those related to William's testimony about his employment history: (1) at the time of the divorce he was employed with a company named Denmac, and he was last paid by them on June 13, 2008; (2) he worked for a company named Netrix in June and July 2008; (3) he received unemployment compensation from September 2008 until November 2008; (4) he worked at a company named Cyberklix from November 2008 until August 2009, and his net income was over \$1,5000 twice per month; (5) he worked for Health Care Solutions Team since August 2009; (6) he was an independent contractor with AFLAC beginning in September 2009; and (7) he worked at IKON/RICOH at the time of the hearing. The exact amount of William's salary at IKON/RICOH was not a stipulation. The bystander's report also contained stipulations about the deposits into William's bank account since the judgment was entered. In 2008, his total bank deposits were \$100,115.30. In 2009, his deposits totaled \$69,437.67. For 2010, his deposits totaled \$68,414.37.

¶ 13 The bystander's report also contained stipulations regarding William's testimony about his investments. He said that he had an Oppenheimer account and that he withdrew \$24,000 from it on October 12, 2010. He identified his Fidelity Investments 401(k) account and said that there was an IRA rollover from the account in November 2009 in the amount of \$35,647.43. He also identified

his Compucoms 401(k) statement for the period from September 2007 to September 2009, and noted a beginning balance of \$8,462.19 and a closing balance of \$13,133.22. William said that the Compucoms account still existed at the time of the hearing. He also identified his John Hancock life insurance policy which had a cash surrender value of \$10,799.74 as of August 2010. That account was also still active at the time of the hearing. He had another John Hancock account valued at \$17,382.11, which was transferred to an Ohio National Life Insurance Company account which had a balance of \$40,548.76 as of March 31, 2011. William also testified that an account was maintained by the Peppler Wealth Defender Trust and William was designated as the trustee. That account was opened in June 2010 with a \$20,025.51 deposit. However, those funds belonged to his mother.

¶ 14 The parties also stipulated to William's testimony that Corrine had agreed that if he quit claimed the former marital residence to her he did not have to pay towards the mortgage, the real estate taxes, or other money that he owed her pursuant to the judgment. The parties also stipulated that Corrine testified that there was no such agreement regarding forgiving William's financial obligations to her in exchange for quit claiming the former marital residence to her, or any agreement to accept less money from William.

¶ 15 The same day that the bystander's report was filed the trial court made findings on the record explaining the reasons behind its February 16, 2012, order. The court found that William was credible when he testified that he had a series of employments post-decree, had lost jobs, and had received unemployment compensation from August 2009 to August 2010.<sup>2</sup> The court also found

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<sup>2</sup> The parties did not stipulate that William received unemployment compensation during this time frame. Instead, they stipulated that he received such compensation for three months, from September to November 2008.

William's testimony credible that his current salary was \$27,900. It noted that it had granted William's petition to modify child support from the date William filed it, and that instead of a specific sum, it required William to pay 28 percent of all income received from all sources, but that if he was cashing out retirement funds that had been previously been granted to him that money would not be deemed income, especially given the "volatile" nature of his employment.

¶ 16 With regard to count II of Corrine's petition, the trial court found that at the time of prove-up of the petition for dissolution Corrine made misrepresentations under oath to the court and that she acted in bad faith when she failed to have the home listed for sale. It also noted that at the time of the divorce Corrine had an attorney, but William was *pro se*. It found that at the hearings on the instant matter William testified credibly that he did not know that the home was not on the market for sale, and that he did initially make payments for a period of time toward the mortgage and assessment fees until he found out that Corrine did not have the house on the market. The court said it appeared that Corrine wanted to keep the home and did not want to sell it. Therefore, it found that Corrine did not bring count II of her petition in good faith. The court said that Corrine did not have "clean hands" in that she did not comply with the judgment in listing the home for sale. It noted that Corrine had only recently had the house listed for sale by owner, and at a price in excess of the fair market value of the property in an attempt to continue to not sell the home. Accordingly, the trial court said, it was disingenuous to try to have William pay towards the mortgage and assessments, and it was merely a veiled attempt on Corrine's part to receive additional maintenance to which she was otherwise not entitled. Therefore, because of Corrine's behavior in not having the house for sale as represented in the judgment at the time of the divorce, Corrine went forward at her own risk and

detriment, and the court refused to find William in contempt or to enforce that provision in the judgment given that the house was now so “underwater.”

¶ 17

## II. ANALYSIS

¶ 18 On appeal, Corrine raises two issues: (1) the trial court erred in failing to hold William in contempt of court pursuant to count II of her petition; and (2) the trial court erred in granting William’s petition to modify child support.

¶ 19

### A. Count II of Corrine’s Petition for Rule to Show Cause

¶ 20 Corrine first argues that the trial court erred in denying her request to hold William in contempt for his failure to pay expenses relating to the marital residence as alleged in count II of her petition. She makes several arguments in support of this claim: (1) even though the judgment does state that the marital home was listed for sale, that did not place upon her the responsibility to list the home for sale; (2) since William was a joint owner of the property, he could have listed the home for sale, even though she had exclusive possession of the marital residence; (3) the trial court should not have considered in William’s favor that she was represented by counsel at the time the judgment was filed and William was *pro se*; (4) the trial court erred in considering evidence regarding whether the residence was listed for sale at the time of the prove up; and (5) by finding that Corrine was required to list the marital home for sale as a condition precedent to William contributing to the expense of the residence, the trial court improperly modified the judgment; and (6) the trial court misapplied the “clean hands” doctrine in an indirect civil contempt hearing.

¶ 21 Whether a party is guilty of contempt is a question of fact for the trial court, and a reviewing court will not disturb that finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 287 (1984).



¶ 22 Interpreting a marriage settlement agreement is a matter of contract construction. *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 269 (2003). If the language of the contract is clear and unambiguous, the intent of the parties is ascertained solely from the words of the contract, given their plain and ordinary meanings. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). Whether a contract is ambiguous is a question of law which is reviewed *de novo*. *Cincinnati Insurance Co. v. Gateway Construction Co.*, 372 Ill. App. 3d 148, 151 (2007).

¶ 23 Here, although Corrine makes many arguments in support of her claim that the trial court erred in denying count II of her petition, they all must fail.

¶ 24 In reviewing the terms of the marriage settlement agreement it is clear that: (1) the parties intended for the marital home to be listed for sale at the time the agreement was entered into (paragraph B of the agreement); and (2) William was responsible to pay certain expenses for the marital home *until the property was sold* (paragraph A of the agreement). It is immaterial who did or did not list the house for sale. Instead, the important fact here is that the house *was not listed for sale*, contrary to the representation made in the marriage settlement agreement. Therefore, if one of these terms was not met – *i.e.*, the house was not listed for sale, a fact that Corrine does not dispute – then the other one need not have been met either – William’s obligation to pay certain expenses for the marital residence *until the property was sold*. Any other interpretation would make William responsible to pay certain expenses for the marital home until it sold, which would never happen because the house not listed for sale, even though the agreement plainly stated that the house was on the market. Such an interpretation is absurd and will not be condoned. *Rubin v. Laser*, 301 Ill. App. 3d 60, 68 (1998) (a contract will not be construed to permit an absurd result).

¶ 25 Having determined as a matter of law that William was not responsible under the agreement to pay certain expenses toward the marital home since it was not listed for sale at the time the agreement was entered into, we hold that the trial court did not err in refusing to hold William in contempt for failing to pay certain expenses related to the marital home. Accordingly, the trial court's order denying count II of Corrine's petition was not an against the manifest weight of the evidence or an abuse of discretion

¶ 26 B. William's Petition to Modify Child Support

¶ 27 Next, Corrine argues that the trial court erred in granting William's petition to modify child support. Specifically, she alleges: (1) William did not prove that there was a substantial change in circumstances to justify modifying the child support because the average monthly deposits into his bank accounts from 2008 to 2010 were greater than his net income at the time the original judgment was entered; (2) other than William's testimony, there was no evidence that he was earning \$27,900 per year at the time of the hearing on the petition; (3) the trial court erred in refusing to consider as income the retirement funds that he cashed in for purposes of calculating child support; and (4) the trial court failed to state a dollar amount in its order modifying support.

¶ 28 In ruling on a petition to modify child support, the trial court must first determine whether a substantial change in circumstances has occurred before it determines the amount of the increase or decrease in child support. *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 194 (2003). The party seeking the modification has the burden of demonstrating that a substantial change in circumstances has occurred. *In re Marriage of Rash and King*, 406 Ill. App. 3d 381, 288 (2010). A trial court's determination that there has been a substantial change in circumstances to warrant the modification

lies within its discretion and will not be disturbed absent an abuse of discretion. *Sassano*, 337 Ill. App. 3d at 194.

¶ 29 We have reviewed the record and conclude that the trial court abused its discretion in granting William's petition to modify child support because there is insufficient evidence in the record to support a finding of a substantial change in circumstances. At the hearing on September 4, 2012, the trial court stated that it found William's testimony that he currently earned \$27,900 per year to be credible. However, the bystander's report contains no stipulation to any such testimony. More important, we can find no exhibit in the record of a pay stub or other documentation from William's employer that he was actually earning that salary. Although Corrine raises this point in her brief on appeal, William does not respond to her claim regarding a lack of evidence of his current salary. The only document in the record that we have been able to find with regard to payments made from William's current employer, IKON/RICOH, is in an exhibit attached to the bystander's report which listed some bank deposits made from that company into William's account. The exhibit lists nine deposits which were made approximately every two weeks from January through May 2011, and the amounts ranged from \$895.02 to \$1,933.70. Given the fact that some deposits were double the amount of others, and the limited number of deposits, this document does not aid the court in determining William's salary at that company. Although there was evidence presented that William held several jobs (albeit without any specific salaries listed in the bystander's report, except as to one employer) and he had been on unemployment for a period of time since he and Corrine divorced, the crucial piece of evidence needed to determine whether the child support award should be modified was his *current* salary. Absent any proof of this salary, the trial court's reliance on William's testimony alone was an abuse of discretion. See *In re Marriage of Anderson*,

409 Ill. App. 3d 191, 199 (2011) (a trial court abuses its discretion when the ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would decide as the trial court did). Accordingly, the trial court's order granting William's petition to modify child support must be reversed.

¶ 30 We feel compelled to note that even if we were not reversing the trial court's order granting William's petition to modify child support we would have had to remand this matter because the trial court erred as a matter of law in failing to set an actual dollar amount in the order modifying support.

¶ 31 Section 505(a)(5) of the Illinois Marriage and Dissolution of Marriage Act (Act) expressly requires that the final order in all cases shall state the support level in dollar amounts, although a court may insert a percentage *in addition to the dollar amount* if it finds that the correct child support amount cannot be stated exclusively as a dollar amount because the payor's income is "uncertain as to source, time of payment, or amount." 750 ILCS 5/505(a)(5) (West 2010). Since the trial court found the nature of William's employment to be "volatile," it should have used the income averaging method to determine William's net income. Such a method is properly used when a noncustodial parent's income varies greatly from year to year. *In re Marriage of Freesen*, 275 Ill. App. 3d 97, 104 (1995). However, the trial court chose to only state that William was required to pay "28% of all net money received." Therefore, the terms of the order violated section 505(a)(5) of the Act. 750 ILCS 5/505(a)(5) (West 2010).

¶ 32 Since we are reversing the trial court's order granting William's petition to modify child support we need not address Corrine's other arguments in support of a reversal.

¶ 33 For the following reasons, the judgment of the circuit court of Lake County is affirmed in part and reversed in part.

¶ 34 Affirmed in part; reversed in part.